

In the Supreme Court of the State of Idaho

IN RE: AMENDMENT OF IDAHO)
APPELLATE RULES (I.A.R.) 11, 11.1, 12,) ORDER
12.1, 12.2, 13, 14(a), 15, 17, 18(e), and 31)
_____)

The Court having reviewed a recommendation from the Appellate Rules Advisory Committee to amend the Idaho Appellate Rules, and the Court having fully considered the same;

NOW, THEREFORE, IT IS HEREBY ORDERED that the Idaho Appellate Rules, as they appear in the volume published by the Idaho Code Commission be, and they are hereby, amended as follows:

1. That a Rule 11(a) be, and the same is hereby, amended to read as follows:

Rule 11. Appealable judgments and orders. An appeal as a matter of right may be taken to the Supreme Court from the following judgments and orders:

(a) Civil Actions. From the following judgments and orders of a district court in a civil action:

- (1) Final judgments, orders and decrees which are final, as defined in Rule 54(a) of the Idaho Rules of Civil Procedure, including orders judgments of the district court granting or denying peremptory writs of mandate and prohibition.
- (2) Decisions by the district court dismissing, affirming, reversing or remanding an appeal.
- (3) Judgments made pursuant to a partial judgment certified by the trial court to be final as provided by Rule 54(b), I.R.C.P.
- (4) Any contempt order or judgment certified by the trial court to be final as provided by Rule 54(b), I.R.C.P.
- (5) An order granting or refusing a new trial, including such orders which contain a conditional grant or denial of a new trial subject to additur and remittitur.
- (6) An order granting or denying a motion for judgment notwithstanding the verdict.
- (7) Any order made after final judgment including an order denying a motion to set aside a default judgment, but excluding an order granting a motion to set aside a default judgment.
- (8) Any order appealable under the Uniform Arbitration Act, Title Seven, Chapter 9 of the Idaho Code.

(b) **Probate Proceedings.** From any interlocutory or final ~~order~~ judgment ~~or decree~~ or order made after final judgment of a district court in a probate proceeding, whether original or appellate, which is or would be appealable from the magistrates division to the district court by statute or these rules.

2. That Rule 11.1 be, and the same is hereby, amended to read as follows:

Rule 11.1. Appealable judgments ~~and orders~~ from the magistrate court.

An appeal as a matter of right may be taken to the Supreme Court from any ~~order~~ final judgment, as defined in Rule 54(a) of the Idaho Rules of Civil Procedure, granting or denying a petition for termination of parental rights; or ~~any order~~ granting or denying a petition for adoption. All time frames for such appeals, including the time for filing a notice of appeal, shall proceed in an expedited manner pursuant to Rule 12.2.

3. That Rule 12 be, and the same is hereby, amended to read as follows:

Rule 12. Appeal by permission.

(a) **Criteria for permission to appeal.** Permission may be granted by the Supreme Court to appeal from an interlocutory order or ~~decree~~ judgment of a district court in a civil or criminal action, or from an interlocutory order of an administrative agency, which is not otherwise appealable under these rules, but which involves a controlling question of law as to which there is substantial grounds for difference of opinion and in which an immediate appeal from the order or decree may materially advance the orderly resolution of the litigation.

(b) **Motion to District Court or Administrative Agency--Order.** A motion for permission to appeal from an interlocutory order or ~~decree~~ judgment, upon the grounds set forth in subdivision (a) of this rule, shall be filed with the district court or administrative agency within fourteen (14) days from date of entry of the order or ~~decree~~ judgment. The motion shall be filed, served, noticed for hearing and processed in the same manner as any other motion, and hearing of the motion shall be expedited. In criminal actions a motion filed by the defendant shall be served upon the prosecuting attorney of the county. The court or agency shall, within fourteen (14) days after the hearing, enter an order setting forth its reasoning for approving or disapproving the motion.

(c) **Motion to Supreme Court for Permission to Appeal.**

(1) **Motion of a Party.** Within fourteen (14) days from entry by the district court or administrative agency of an order approving or disapproving a motion for permission to appeal under subdivision (b) of this rule, any party may file a motion with the Supreme Court requesting acceptance of the appeal by permission. A copy of the interlocutory order or judgment being appealed shall be attached to the motion, along with a copy of the order of the district court or administrative agency approving or disapproving the permission to appeal. If the district court or administrative agency fails to rule upon a motion for permission to appeal within twenty-one (21) days from the date of the filing of

the motion, any party may file a motion with the Supreme Court for permission to appeal without any order of the district court or administrative agency.

(2) **Motion by order of court or agency.** A district court or administrative agency may enter, on its own initiative, an order recommending permission to appeal from an interlocutory order or decreed-judgment. The court or agency shall file a certified copy of its order with the Supreme Court and serve copies on all parties. The order recommending permission to appeal shall constitute and be treated as a motion for permission to appeal from the interlocutory order or decreed-judgment under this rule.

(3) **Procedure.** A motion to the Supreme Court for permission to appeal under this rule shall be filed, served, and processed in the same manner as any other motion under Rule 32 of these rules. In criminal actions a motion filed by the defendant shall be served upon the prosecuting attorney of the county and the attorney general of the state of Idaho.

(d) **Acceptance by Supreme Court.** Any appeal by permission of an interlocutory order or decreed-judgment under this rule shall not be valid and effective unless and until the Supreme Court shall enter an order accepting such interlocutory order or decreed-judgment as appealable and granting leave to a party to file a notice of appeal within a time certain. Such appeal shall thereafter proceed in the same manner as an appeal as a matter of right, unless otherwise ordered by the Supreme Court in its order of acceptance. The clerk of the Supreme Court shall file with the district court or administrative agency a copy of the order of the Supreme Court granting or denying acceptance, and shall mail copies to all parties to the action or proceeding.

4. That Rule 12.1 be, and the same is hereby, amended to read as follows:

Rule 12.1. Permissive appeal in custody cases.

(a) Whenever the best interest of a child would be served by an immediate appeal to the Supreme Court, any party or the magistrate hearing a case may petition the Supreme Court to accept a direct permissive appeal of a final judgment, as defined in Rule 54(a) of the Idaho Rules of Civil Procedure, or order made after final judgment, involving the custody of a minor, or a Child Protective Act proceeding, without first appealing to the district court. The filing of a motion for permissive appeal shall stay the time for appealing to the district court until the Supreme Court enters an order granting or denying the appeal. In the event a notice of appeal to the district court is filed prior to the motion for permissive appeal, the magistrate shall retain jurisdiction to rule on the motion and, in the event the motion is granted by the Supreme Court, the appeal to the district court shall be dismissed.

(b) **Motion to magistrate court.** In any case in which it is a party seeking the permissive appeal, a motion for permission to appeal must first be filed with the magistrate court within fourteen days from the date of entry of the final judgment or order or decree. The motion shall be filed, served, noticed for hearing and processed in the same manner as any other motion, and hearing of the motion shall be expedited. The magistrate court shall, within fourteen (14) days after the hearing, enter an order approving or disapproving the motion.

5. That Rule 12.2 be, and the same is hereby, amended to read as follows:

Rule 12.2. Expedited review for appeals in custody cases brought pursuant to Rule 11.1 or Rule 12.1.

This rule governs procedures for an expedited review of an appeal brought as a matter of right pursuant to Rule 11.1 or a permissive appeal granted pursuant to Rule 12.1.

(a) Notice of appeal.

(1) An appeal from any ~~order~~ final judgment, as defined in Rule 54(a) of the Idaho Rules of Civil Procedure, granting or denying a petition for termination of parental rights or granting or denying a petition for adoption shall be made only by physically filing a notice of appeal with the clerk of the district court within fourteen (14) days from the date of issuance of the ~~order~~ judgment. A notice of cross appeal must be filed within seven (7) days from the notice of appeal.

6. That Rule 13 be, and the same is hereby, amended to read as follows:

Rule 13. Stay of proceedings upon appeal or certification.

(a) Temporary Stay in Civil Actions Upon Filing a Notice of Appeal or Notice of Cross-Appeal. Unless otherwise ordered by the district court, upon the filing of a notice of appeal or notice of cross-appeal all proceedings and execution of all judgments; or orders ~~or~~ decrees in a civil action in the district court, shall be automatically stayed for a period of fourteen (14) days. Any further stay shall be only by order of the district court or the Supreme Court. Any stay of orders or proceedings in the Industrial Commission or the Public Utilities Commission shall be as provided in Rule 13(d) and (e).

(b) Stay Upon Appeal - Powers of District Court - Civil Actions. In civil actions, unless prohibited by order of the Supreme Court, the district court shall have the power and authority to rule upon the following motions and to take the following actions during the pendency on an appeal;

(13) Take any action or enter any order required for the enforcement of any judgment; or order ~~or~~ decree.

7. That Rule 14(a) be, and the same is hereby, amended to read as follows:

Rule 14. Time for filing appeals.

All appeals permitted or authorized by these rules, except as provided in Rule 12, shall be taken and made in the manner and within the time limits as follows:

(a) Appeals From the District Court. Any appeal as a matter of right from the district court may be made only by physically filing a notice of appeal with the clerk of the district court within 42 days from the date evidenced by the filing stamp of the clerk of the court on any judgment; or order ~~or~~ decree of the district court appealable as a

matter of right in any civil or criminal action. The time for an appeal from any civil judgment, or order or decree in an action is terminated by the filing of a timely motion which, if granted, could affect any findings of fact, conclusions of law or any judgment in the action (except motions under Rule 60 of the Idaho Rules of Civil Procedure or motions regarding costs or attorneys fees), in which case the appeal period for all judgments, or orders and decrees commences to run upon the date of the clerk's filing stamp on the order deciding such motion. The time for an appeal from any criminal judgment, order or sentence in an action is terminated by the filing of a motion within fourteen (14) days of the entry of the judgment which, if granted, could affect the judgment, order or sentence in the action, in which case the appeal period for the judgment and sentence commences to run upon the date of the clerk's filing stamp on the order deciding such motion. In a criminal case, the time to file an appeal is enlarged by the length of time the district court actually retains jurisdiction pursuant to Idaho Code. When the court releases its retained jurisdiction or places the defendant on probation, the time within which to appeal shall commence to run. Provided, if a criminal judgment imposes the sentence of death, the time within which to file a notice of appeal does not commence to run until the death warrant is signed and filed by the court.

8. That Rule 15 be, and the same is hereby, amended to read as follows:

Rule 15. Cross-appeal after an appeal.

(a) **Right to cross-appeal.** After an appeal has been filed, a timely cross-appeal may be filed from any interlocutory or final judgment, or order or decree. If no affirmative relief is sought by way of reversal, vacation or modification of the judgment, or order or decree, an issue may be presented by the respondent as an additional issue on appeal under Rule 35(b)(4) without filing a cross-appeal.

(b) **Time for filing.** A cross-appeal, as a matter of right, may be made only by physically filing the notice of cross-appeal with the clerk of the district court or administrative agency within the 42 day time limit prescribed in Rule 14, as it applies to the judgment, or order or decree from which the cross-appeal is taken, or within 21 days after the date of filing of the original notice of appeal, whichever is later.

9. That Rule 17 be, and the same is hereby, amended to read as follows:

Rule 17. Notice of appeal - Contents.

A notice of appeal shall contain substantially the following information:

(a) **Title.** The title of the action or proceeding.

(b) **Court or Agency Title.** The title of the court or agency which heard the trial or proceeding and the name and title of the presiding judge or official.

(c) **Case Number.** The number assigned to the action or proceeding by the trial court or administrative agency.

(d) **Parties.** The name of the appealing party and the party's attorney and the name of the adverse party and that party's attorney. An address, phone number and email address must also be given, except no email address is required for persons appearing pro se.

(e) **Designation of Appeal.**

(1) **A Designation of the Judgment, or Order or Decree Appealed From.** The notice of appeal shall designate the ~~final~~ judgment, ~~or~~ order ~~or~~ decree appealed from which shall be deemed to include, and present on appeal:

(A) All interlocutory judgments, and orders ~~or~~ decree entered prior to the judgment or order appealed from, and

(B) All final judgments, and orders ~~or~~ decrees entered prior to the judgment, ~~or~~ order ~~or~~ decree appealed from for which the time for appeal has not expired, and

(C) All interlocutory or final judgments, and orders ~~and~~ decrees entered after the judgment or order appealed from.

(2) **Premature Filing of Notice of Appeal.** A notice of appeal filed from an appealable judgment, ~~or~~ order ~~or~~ decree before formal written entry of such document shall become valid upon the filing and the placing the stamp of the clerk of the court on such appealable judgment, ~~or~~ order ~~or~~ decree, without refiling the notice of appeal.

10. That Rule 18(e) be, and the same is hereby, amended to read as follows:

Rule 18. Notice of cross-appeal - Contents.

A notice of cross-appeal shall contain substantially the following information:

(a) **Title.** The title of the action or proceeding.

(b) **Court or Agency Title.** The title of the court or agency which heard the trial or proceeding and the name and title of the presiding judge or official.

(c) **Case Number.** The number assigned to the action or proceeding by the trial court or administrative agency.

(d) **Parties.** The name of the party cross-appealing and the party's attorney and the name of the adverse party and that party's attorney. An address, phone number and email address must also be given, except no email address is required for persons appearing pro se.

(e) **Designation of Appeal.** A designation of the judgment, ~~or~~ order ~~or~~ decree appealed from shall be deemed to include, and present on appeal, the same interlocutory and final judgments, and orders ~~and~~ decrees in the same manner as provided for a notice of appeal under Rule 17(e).

11. That Rule 31 be, and the same is hereby, amended to read as follows:

Rule 31. Exhibits, recordings and documents.

(a) **Lodging with Supreme Court.** The clerk of the district court or administrative agency shall lodge all of the following exhibits, recordings and documents with the Supreme Court:

(1) Copies of all requested documents, charts and pictures offered or admitted as exhibits in a trial or hearing in a civil case and copies of all documents, charts and pictures offered or admitted as exhibits in a trial or hearing in a criminal case, except that pictures or depictions of child pornography shall not be copied and sent to the parties or the Supreme Court unless specifically ordered by the court. Documentary

exhibits in pdf format may be sent to the Supreme Court on a CD that includes an index. All other exhibits shall be retained by the clerk of the district court or administrative agency, unless otherwise ordered by the Supreme Court. The clerk shall forward to the Supreme Court photographs of all other exhibits in death penalty cases. Upon the request of a party in other cases, the clerk shall forward to the Supreme Court photographs of designated exhibits.

(2) All records and transcripts filed with the district court or administrative agency.

(3) All transcripts from the magistrate's division of the district court.

(4) All audio and audio-visual recordings offered or played during the proceedings.

(b) **Documentary Exhibits.** In any criminal or post-conviction case where a documentary exhibit, including a pre-sentence report, is transmitted to the Supreme Court for use in an appellate proceeding, the district court shall serve a copy of the documentary exhibit on the attorney general and on appellate counsel for the defendant, subject to the confidentiality provisions of I.C.A.R. 32. Copies of documentary exhibits in pdf format may be sent on a CD that includes an index. However, pictures or depictions of child pornography that are separately identified pursuant to I.C.R. 32(e)(1) shall not be transmitted to the parties or the Supreme Court unless specifically requested.

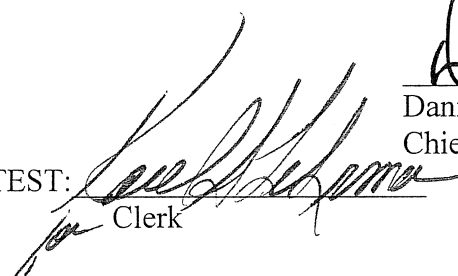
IT IS FURTHER ORDERED, that this order and these amendments shall be effective the first day of July, 2010.

IT IS FURTHER ORDERED, that the above designation of the striking of words from the Rules by lining through them, and the designation of the addition of new portions of the Rules by underlining such new portion is for the purposes of information only as amended, and NO OTHER AMENDMENTS ARE INTENDED. The lining through and underlining shall not be considered a part of the permanent Idaho Appellate Rules.

IT IS FURTHER ORDERED, that the Clerk of the Court shall cause notice of this Order to be published in one issue of *The Advocate*.

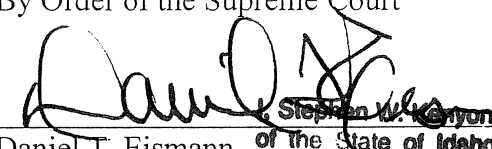
DATED this 29 day of March, 2010.

By Order of the Supreme Court


Daniel T. Eismann,
Chief Justice

ATTEST:


Clerk


Stephen W. Kenyon, Clerk of the Supreme Court
of the State of Idaho, do hereby certify that the
above is a true and correct copy of the Order
entered in the above entitled cause and now on
record in my office.
WITNESS my hand and the Seal of this Court 3/24/10

STEPHEN W. KENYON

Clerk

By: 

Deputy